

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STRIKE 3 HOLDINGS, LLC, a Delaware
corporation,

August,

v.

JOHN DOE, subscriber assigned IP
address 73.225.38.130,

Defendant.

Case No. 2:17-cv-01731-TSZ

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR A MORE
DEFINITE STATEMENT**

NOTE ON MOTION CALENDAR:
August 10, 2018

ORAL ARGUMENT REQUESTED

I. INTRODUCTION

Plaintiff's First Amended Complaint ("FAC") (Dkt. # 43) readily complies with the Court's June 6 Order (Dkt. #36) detailing what should be included in an amended complaint. The FAC includes numerous new and detailed allegations adequately addressing the Court's concerns regarding Plaintiff's original complaint. Yet, in another dilatory tactic to avoid litigating this case on the merits, Defendant filed a second Motion for a More Definite Statement. Defendant's Motion demonstrates a fundamental misunderstanding of black letter law regarding civil procedure: a plaintiff is not required to prove its case in its complaint. Defendant's Motion, however, asks the Court to require Plaintiff to do just that. In fact, what Defendant's Motion

OPPOSITION TO DEFENDANT'S MOTION FOR A MORE
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1 really seeks to do is conduct discovery during and through the pleadings by forcing even more
2 detailed allegations far above what is required under well-settled pleading standards.

3 Moreover, much of Defendant's Motion challenges the credibility and reliability of
4 Plaintiff's infringement investigation as a basis to demand even more detailed allegations in
5 another amended complaint. Those challenges to the sufficiency of the evidence, however, are
6 trial or dispositive motion arguments to be explored in discovery, they are not grounds to order
7 Plaintiff file a second amended complaint answering all of Defendant's various discovery
8 questions and evidentiary arguments. Defendant's Motion is inappropriate and the Court should
9 deny it entirely and order Defendant answer the FAC so the parties can commence discovery and
10 litigate this case on the merits. Defendant knows full well the substance of the claims asserted
11 against him and the factual basis thereof. He can answer the FAC.

12 The FAC goes far beyond providing Defendant with sufficient notice of a plausible claim
13 for relief against him. In fact, it describes—in painstaking detail—the mechanics of the
14 BitTorrent Network, the software used by Plaintiff's investigator to detect rampant infringement,
15 and the means by which Defendant's IP address was identified and why it is very likely
16 Defendant was indeed using this address. Exhibit A to the FAC also provides the registration
17 numbers to every work Plaintiff's investigator caught the IP address infringing and the time each
18 infringement occurred. Accordingly, the FAC far exceeds what the Court called upon Plaintiff to
19 do in its June 6 Order (Dkt. #36). For Defendant to still argue that he still does not have notice
20 of the substance of Plaintiff's very straightforward copyright infringement claim against him is
21 disingenuous—Defendant is playing dumb as a litigation tactic (winning an Academy Award for
22 his performance). The Court should not allow it to continue because Defendant is not
23 questioning the FAC; rather, he is trying to conduct discovery under the guise of another Motion
24 for a More Definite Statement. The Motion should be denied.

II. PROCEDURAL HISTORY

Plaintiff filed a complaint for copyright infringement on November 16, 2017 (“Original Complaint”) (Dkt. # 1) and obtained an order granting its Motion for Leave to Serve a Third Party Subpoena on December 4, 2017. Dkt. # 5. Thereafter, Defendant appeared through counsel on February 12, 2018. Dkt. # 14. On March 8, 2018, Defendant filed his first motion to dismiss, abate, or for more definite statement (Dkt. # 21) which attached 21 exhibits and four supporting declarations combining for over 200 pages of mostly irrelevant material.¹ On May 31, 2018, before the parties’ conference pursuant to Fed.R.Civ.P. 26(f) occurred, Defendant propounded 27 requests for production on Plaintiff and eight requests for admission.

In the Court’s June 6 order (“Order”) (Dkt. # 36), the Court denied Defendant’s Motion to Dismiss or Abate the Original Complaint, but granted Defendant’s Motion for More Definite Statement, holding in relevant part:

- 1) “[P]laintiff does not plead that the files downloaded from [D]efendant’s IP address are or contain renderable, viewable versions of [P]laintiff’s copyrighted works or any portions thereof.”;
- 2) “[T]he [Original Complaint] offers no detail concerning what software or hardware was used by [P]laintiff’s investigator to harvest **pieces** of the digital media files at issue”; and
- 3) “[The Original Complaint] sets forth no facts tending to show [D]efendant was using the IP address at issue at the times listed in Exhibit A”.

Order at pp. 2-3 (emphasis original).

Plaintiff addressed and satisfied all of these issues with abundant factual detail in its FAC, and Defendant cannot meet his high burden under Fed.R.Civ.P. 12(e) of demonstrating that the FAC still remains “so vague or ambiguous” that he “cannot reasonably prepare a response.”

¹ Further illustrating Defendant’s improper procedural antics and complete disregard for judicial economy, Defendant filed frivolous and legally untenable counterclaims against Plaintiff on March 8, 2018 (Dkt. # 22), voluntarily withdrew the claims after receiving Plaintiff’s motion to dismiss (Dkt. # 24), and then refiled additional counterclaims (equally frivolous as the original ones) against Plaintiff on May 1, 2018 (Dkt. # 32).

1 Plaintiff is well-aware of the claims against him, he is just using motion practice to conduct
2 discovery. That effort must be rejected.

3 **III. LEGAL STANDARD**

4 A motion for a more definite statement under Fed.R.Civ.P. Rule 12(e) attacks the
5 intelligibility of the complaint, not the lack of detail, and is properly denied when the complaint
6 notifies the defendant of the substance of the claims asserted. *Presidio Grp., LLC v. GMAC*
7 *Mortg., LLC*, 2008 WL 3992765, at *1 (W.D. Wash. 2008) citing *U.S. v. Sequel Contractors,*
8 *Inc.*, 402 F. Supp. 2d 1142, 1147 (C.D. Cal. 2005). “Motions for more definite statement are
9 viewed with disfavor, and are rarely granted.” *C.B. v. Sonora Sch. Dist.*, 691 F. Supp. 2d 1170,
10 1191 (C.D. Cal. 2010) quoting W. Schwarzer, A. Wallace, and J. Wagstaff: Federal Civil
11 Procedure Before Trial § 9:351 (2000); *Presidio Grp.*, 2008 WL 3992756 at 1. In particular,
12 ***“[i]f the detail sought by a motion for a more definite statement is obtainable through***
13 ***discovery, the motion should be denied.”*** *Neveu v. City of Fresno*, 392 F. Supp. 2d 1159, 1169-
14 70 (E.D. Cal. 2005); *Sneller v. City of Bainbridge Island*, 2007 WL 4562882 at * 2 (W.D. Wash.
15 2007); *Berry v. Hitachi Home Elec. (Am.), Inc.*, 157 F.R.D. 477, 480 (C.D. Cal. 1993). That is
16 precisely the case here. Defendant can obtain the detail he seeks via discovery, thus illustrating
17 he knows and understands the claims against him but is instead improperly trying to conduct
18 discovery via pleading motion practice.

19 A motion for a more definite statement under Fed.R.Civ.P. Rule 12(e) motion should not
20 be used to resolve merit issues, especially fact-sensitive matters which should be left for
21 summary judgment after full discovery. *See One Indus., LLC v. Jim O’Neal Distrib. Inc.*, 578 F.
22 3d 1154, 1160 (9th Cir. 2009) (***deciding a fact-intensive issue on a motion for more definite***
23 ***statement is inappropriate and can deprive plaintiff of opportunity to prove its case through***
24 ***discovery***) (emphasis added); *see also Jessup & Moore Paper Co. v. W. Va. Pulp & Paper Co.*,
25 25 F. Supp. 598, 600 (D. Del. 1938) (“to construe Rule 12(e) so as to destroy the fundamental
26 distinction between pleading and proof has never been suggested or intimated by any

commentator”); *Byers v. Olander*, 7 F.R.D. 745, 746 (W.D. Pa. 1948) (“Rule 12(e) necessarily calls for constriction that opposes pleading evidence...”). Indeed, “[p]arties are expected to use discovery, not the pleadings, to learn the specifics of the claims being asserted.” *Sagan v. Apple Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994). Accordingly, as held by a court in a similar case of alleged illegal downloading of copyrighted content, “[t]o require [plaintiff] prove that the subscriber more likely than not is the infringer [*i.e.*, meet the ultimate burden of proof] at the pleading stage would turn the civil litigation process on its head.” *Malibu Media, LLC v. Doe*, 2014 WL 7188822, at *5 (D. Md. 2014). That is what Defendant is trying to do here through his serial motions. The Court should not allow it.

IV. ARGUMENT

A. **The FAC adequately pleads facts that, if true, constitute strong circumstantial evidence that the pieces of Plaintiff’s works Defendant distributed can be assembled into renderable, viewable versions of the works.**

As directed by the Court, the FAC pleads that Plaintiff’s investigator downloaded from Defendant “one or more pieces of the digital media files containing Strike 3’s motion pictures listed on Exhibit A” and “the digital media files have been verified to contain a digital copy of [Plaintiff’s copyrighted works].” FAC at ¶¶ 32-33. The FAC further explains how these file pieces, although not playable portions of Plaintiff’s motion pictures themselves, constitute “digital fingerprints” and “forensic evidence of Defendant’s infringement” which can be assembled to form a viewable version of Plaintiff’s works. FAC at ¶¶ 37, 39. Plaintiff was unable to obtain a viewable portion of its works from Defendant because the BitTorrent protocol requires a user to exchange data to obtain an upload. FAC at ¶ 42, 43. In other words, Plaintiff would be required to infringe its own works and transmit to Defendant through the BitTorrent network viewable versions of Plaintiff’s movies to receive some of the viewable content Defendant unlawfully downloaded. *Id.* Plaintiff need not become Defendant’s co-conspirator to gather sufficient evidence of Defendant’s unlawful behavior. *See Bleiberg Entm’t, LLC v. John and Jane Does 1-47*, 2013 WL 3786641, at *6 (D. Ariz. 2013) (finding conspiracy of BitTorrent

users to infringe copyrighted works “may be established by circumstantial evidence through the nature of the acts, the relationship of the parties, the interests of the conspirators, or other circumstances.”); *Data East USA, Inc. v. Epyx, Inc.*, 862 F. 2d 204, 206 (9th Cir. 1988) (acknowledging direct evidence of copying is seldom found and copying may be established instead by circumstantial evidence); *U.S. v. Nelson*, 419 F. 2d 1237, 1240 (9th Cir. 1969) (holding circumstantial evidence can be used to “prove any fact, including a fact from which another fact is to be inferred”).

Plaintiff has pled adequate circumstantial evidence that indicates the file pieces Defendant downloaded from the BitTorrent Network, when assembled together, constitute viewable portions of Plaintiff’s copyrighted works. FAC at ¶¶ 24-43. Plaintiff explained in great detail how the BitTorrent Network is routinely used to illegally download and distribute copyrighted content. FAC at ¶¶ 18-23. Plaintiff also illustrated how IPP International U.G. (“IPP”) —Plaintiff’s investigator, the credentials and credibility of who are not up for debate at the pleading stage—used specialized software to enter a swarm of BitTorrent users distributing copyrighted content and established contact with Defendant’s IP address. FAC at ¶¶ 24-28. Plaintiff further explained how IPP observed Defendant’s infringement, logged it, and downloaded one or more pieces of the digital media files containing Plaintiff’s works. FAC at ¶¶ 31-33. ***It makes no rational sense why Defendant would download dozens of pieces of Plaintiff’s works from May to December of 2017 if those pieces could not be assembled into a readable format.*** One routine round of discovery in which Plaintiff can conduct a forensic examination of Defendant’s computer(s) and/or access to Defendant’s BitTorrent account will reveal Defendant is, or was, in possession of dozens of viewable copies of Plaintiff’s copyrighted works and transmitted these works in willful disregard for Plaintiff’s rights.² FAC at ¶ 39.

² Defendant constructs a straw man argument claiming Plaintiff “admits that it does not have evidence that Doe downloaded complete copies of its works and that the pieces it has linked to Doe’s email address are not renderable, viewable versions of [P]laintiff’s copyrighted works or any portions thereof.” Motion at 5. To the contrary, Plaintiff has ample circumstantial evidence that the pieces of Plaintiff’s works which Defendant downloaded, although not containing viewable content by themselves, can be assembled to create viewable copies of Plaintiff’s

1 Plaintiff should be permitted to engage in this discovery to confirm the veracity of its allegations,
2 but at this stage of this action, all of Plaintiff's factual allegations *must* be accepted as true.³

3 The FAC pleads sufficient facts that when proved will demonstrate irrefutable evidence
4 that the files downloaded from Defendant's IP address can be assembled to display renderable,
5 viewable versions of Plaintiff's copyrighted works.

6 **B. The FAC provides sufficient detail concerning the software and hardware**
7 **that Plaintiff's investigator used to obtain the pieces that Defendant**
8 **downloaded from Plaintiff's digital media files.**

9 In accordance with the Court's June 6 Order, the FAC identifies and explains the
10 mechanics and tools by which IPP detected and recorded Defendant's infringement. The
11 specialized software IPP used is a proprietary BitTorrent client which enters the swarm of
12 infringers in the BitTorrent Network and communicates with, and hence downloads from, users
13 in the swarm. FAC at ¶ 26. Once IPP's BitTorrent client enters the swarm, individual users
14 unlawfully sharing Plaintiff's copyrighted works connect to the client and send IPP pieces of
15 Plaintiff's works. FAC at ¶ 27. The infringing transactions are recorded via PCAP which are
16 then stored on WORM tape drives and analyzed by TCPDump which is commonly used to
17 accurately record network traffic. FAC at ¶¶ 28-30. The FAC also identifies the exact make and
18 model of the hardware that IPP used to identify Defendant's IP address and describes in great
19 detail the PCAP analysis process.⁴ FAC at ¶¶ 31-38.

20 works. Moreover, Defendant also misunderstands the role of a PCAP which, as Plaintiff clearly illustrates, contains
21 just two hashes – one of which identifies Defendant's IP address and the other identifies the individual piece that
22 Defendant transmitted to IPP. FAC at ¶ 38. Accordingly, a PCAP only contains one individual piece and does not
23 contain the completed and viewable motion picture, but reassembling the pieces captured in various PCAPs can
24 result in a fully playable digital movie. Motion at 6. This, in turn, renders Plaintiff's allegation that "Defendant
25 downloaded, copied, and distributed a complete copy of Plaintiff's Works" well-founded. Original Complaint at
26 ¶ 27; FAC at ¶¶ 24, 39; *see also* Motion at 6.

24 ³ *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 589 (2007) (holding *a court must treat all factual*
25 *allegations as true when evaluating the sufficiency of a complaint "even if doubtful in fact"* and noting a
26 heightened fact pleading of specifics is not required; just enough facts to state a claim to relief that is "plausible on
its face.") (emphasis added) (citations omitted).

⁴ The information the FAC provides is more than sufficient to withstand a motion for more definite statement.
Revealing any additional data risks disclosing IPP's sensitive propriety information and trade secrets, some of which

1 A “motion [for more definite statement] is not to be used as a substitute for discovery and
 2 deposition procedure... that is, it is improper to utilize the motion for a more definite statement
 3 for the purpose of eliciting evidentiary facts, or for that matter, any facts beyond those which are
 4 necessary to enable the movant to frame a responsive pleading.” *Kuenzell v. U.S.*, 20 F.R.D. 96,
 5 98 (N.D. Cal. 1957). That is exactly what Defendant is attempting here. As if in a deposition,
 6 Defendant’s Motion peppers Plaintiff with questions that are evidentiary in nature, better suited
 7 for discovery, and seeks additional information about the means by which Defendant’s
 8 infringement was detected and documented. Plaintiff is not required to address these questions
 9 or any other inquiry Defendant may conjure up at the pleading stage. The validity of IPP’s
 10 system is a disputed question of fact to be explored in discovery.⁵

11 Defendant makes much ado over nothing regarding the fact that a handful of the hash
 12 values logged in Exhibit A to the FAC deviated from some of the hashes in Exhibit A to the
 13 Original Complaint.⁶ Motion at p. 8. Defendant even goes so far as to introduce an entirely
 14 improper six-page pseudo-expert report from Defendant’s counsel Kiren Rockenstein which
 15 analyzes these discrepancies and curiously concludes they are somehow evidence of a false-
 16 positive rate to IPP’s software of 10-17%.⁷ Declaration of Kiren Rockenstein (“Rockenstein
 17 Decl.”) ¶¶ 9, 11; Motion at 8.

18 Plaintiff may produce in discovery pursuant to an appropriate protective order but certainly not in a pleading
 19 accessible to the public.

20 ⁵ The materials Defendant seeks in its Motion (*i.e.*, “a systems diagram, user manuals, user guides, or anything else
 21 that would allow someone to assess the validity of the infringement detection system”) constitute evidence which
 22 can be used to demonstrate and/or undermine the validity of IPP’s system. Motion at p. 7. Defendant is thus using a
 motion for more definite statement to elicit evidentiary facts, which is clearly prohibited by *Kuenzell* and its
 progeny.

23 ⁶ Importantly, Defendant’s comparisons between Plaintiff’s Original Complaint and FAC are irrelevant because
 24 “[t]he filing of an amended complaint supersedes the original complaint and renders it without legal affect.” *Block v.*
Washington State Bar Ass’n, No. C15-2018RSM, 2016 WL 7716072, at *1 (W.D. Wash. Feb. 24, 2016).

25 ⁷ Rockenstein’s declaration opines as to the reliability of IPP’s software and, accordingly, constitutes impermissible
 26 attorney-expert testimony which should be struck pursuant to the Washington Rules of Professional Conduct
 (“RPC”) Rule 3.7 prohibiting lawyers from acting as advocates in a case in which the lawyer is likely to be a
 necessary witness. *BP West Coast Prod., LLC v. Shalabi*, 2013 WL 1694660 at *2 (W.D. Wash. 2013).

Defendant's infringement was especially pervasive and included unauthorized distribution of multiple different copies of the same copyrighted work. The law only allows Plaintiff to assert a single claim for each unique work infringed, and the fact that Plaintiff elected to assert a claim on one pirated version in its initial Complaint and then on another in its FAC has no consequence except to illustrate the breadth of Defendant's infringement. The works which Defendant infringed via multiple pirated copies are:

Anal On My Sisters Wedding Day	5F25F5C8970A1123950D8543F0C954308ECC9D12	9/24/2017 16:04:53	Amended
Anal On My Sisters Wedding Day	F4A9F0567219CB991D41B5AD34DCA1CB04591497	9/25/2017 11:19:11	Original
Drunk Dial Aftermath	1278F4C4BF0B45678418F6CC8F8844DE4AB68C83	5/15/2017 5:03:17	Amended
Drunk Dial Aftermath	49F03BF24CE42C3AFFA968C9CFE37DB55B3B555E	9/28/2017 18:38:00	Original
Giving Him What He Needs	337A87F18ACD71687C3733C359197601B44E39FF	6/1/2017 9:40:11	Original
Giving Him What He Needs	E8910563DE2084C48C6A8C5801457339745A09FA	5/31/2017 11:21:03	Amended
He Loves My Big Butt	64683F0353A903719B39E742A35B975B17849BF7	9/1/2017 13:56:38	Original
He Loves My Big Butt	792198F0F41E1FFA44A67E62F451EC11B9B692EF	8/1/2017 8:35:59	Amended
Model Misbehaviour	3F3D4931127C380DD0AA05C298E26438267560BB	7/5/2017 4:23:31	Amended
Model Misbehaviour	807F407D94E9D91A368B24C5EEA7DBA5FF438450	10/12/2017 19:03:36	Original
My Rise In The Ranks Part 2	18A6F7D0E24D4FA3CC1589DE496D1AD9433CF09B	6/20/2017 1:03:31	Amended

My Rise In The Ranks Part 2	CB9ABC2B058CADE2FA7C0BD6A20558DC0E46EB0D	6/24/2017 0:42:22	Original
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Taking Charge	0CAB7415EAE003A2C3835DE5FC716759A49040B9	7/5/2017 19:58:23	Amended
Taking Charge	F77021A22716CC4E2F1154DBDF60A3891FF84DE1	9/29/2017 10:33:06	Original

Defendant notes additional works are included in the FAC which were not present in the initially filed action. These infringements were committed by Defendant after the initial lawsuit and associated exhibits were drafted. Plaintiff could not foretell which future titles Defendant would infringe when drafting its Original Complaint. These works are:

I Could Not Wait Anymore	F28E401CBB99CFB32E0808B7662BC50A9C5F64AD	11/10/2017 0:59:33	Amended
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I Have Waited All Week For This	94E00EDACF46F8763B4B28A29BEB83473AC2BA8E	11/22/2017 11:18:15	Amended
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Loaned By Daddy	DCE0631B0833B899B8A4C577203A87AD00BD2B8B	11/13/2017 1:30:20	Amended
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My Boyfriend Wants Me To Do It	DB6040CB19308F376554AC18F5C883139311322D	11/7/2017 1:43:58	Amended
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My Dirty Pastime	C6965A70345AC1C86DD34737BF381734CA301655	12/1/2017 12:28:34	Amended
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OK Maybe One More Time	C59734C1DC4D87F563ABE2D6E371C12FD12FC7D9	11/2/2017 9:05:02	Amended
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Passionate Sex With My Rival	ABC004062B9F9CF37E9A3A57F4BEA161154EECAE	11/30/2017 20:59:54	Amended
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Sex With My Moms Boy Toy	8519F3BB18D38EB8472CD07987B1BC2224E7EC22	11/9/2017 8:28:23	Amended
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1 One Work, titled “Sex To Get Ahead”, was present in the Original Complaint but is not
 2 present in the FAC. The claim for this Work was removed due to extended delays within the US
 3 Copyright Office which prevented confirmation of copyright final registration.

4 Several works in the initial complaint originally were registered but not yet
 5 finalized. The information displayed on the original Exhibit A was the expected registration date
 6 and Registration ID# in Plaintiff’s possession at the time of the drafting of the Original
 7 Complaint. These were all finalized and assigned official registration dates and PA numbers by
 8 the time the Amended Exhibit A was drafted, and the Amended Exhibit A reflects what is
 9 currently displayed on the US Copyright Office website. All registrations were done within 90
 10 days of first publication as evidenced by the Amended Exhibit A.

11 **C. The FAC pleads sufficient facts demonstrating Defendant was using his IP**
 12 **address at the times listed in Exhibit A to the FAC.**

13 The FAC pleads facts that, when accepted as true, indicate it is not only plausible but
 14 rather highly likely that Defendant was the one using his IP address to infringe Plaintiff’s works.
 15 IPP made direct contact with Defendant’s IP address and observed it downloading and
 16 transmitting pieces of Plaintiff’s works over eighty times throughout an approximate six-month
 17 period (May through November 2017). FAC at ¶ 50. Accordingly, this means the infringer must
 18 have been someone with consistent long-term access to the IP address, *i.e.*, the Defendant
 19 himself or a resident in his home as opposed to a transient house guest, visitor, or passerby.⁸ *Id.*
 20 Moreover, the infringement suddenly stopped after Defendant *received notice* of this action in or
 21 around December of 2017, again indicating Plaintiff sued the right person. That there was
 22 continued infringement in November of 2017 and on December 1, 2017 after this action was

23 _____
 24 ⁸ This fact largely eliminates the concern articulated in *AF Holdings LLC v. Rogers*, 2013 WL 358292 at *2 (S.D.
 25 Cal. 2013) which found a lone allegation linking the infringing IP address to Defendant insufficient because visitors,
 26 neighbors or a passerby could access it. Motion at p. 9. This concern is amplified if the network is unsecured –
 which does not appear to be the case here. The Motion seems to suggest Defendant’s network is password
 protected. See Motion at 9, Ins 7-10. Finally, *AF Holdings* was a case where there was just one alleged instance of
 infringement, which renders it inapposite here where the facts document longstanding and rampant infringement.
AF Holdings LLC, supra at *1.

1 filed is of no moment as the Defendant could not have obtained notice of this case until after the
 2 Court granted Plaintiff's *ex parte* application to serve a third party subpoena to locate Defendant,
 3 Plaintiff served the subpoena and his internet provider notified him of the subpoena. After such
 4 notification, it appears that Defendant obtained Mr. Edmondson as his counsel.

5 Plaintiff's ignorance of Defendant's identity at the time it filed its Amended Complaint
 6 made it impossible to allege additional facts establishing Defendant's use of his IP address. FAC
 7 at ¶ 49. If Plaintiff had known Defendant's identity, it could have better investigated his online
 8 footprint and utilized discovery to uncover evidence that confirms his culpability. Plaintiff
 9 cannot be expected to provide such evidence when Defendant's identity was unknown to it. *See*
 10 *Bleiberg Entm't, LLC, supra* at *6 (holding complaint stated sufficient facts to believe it is
 11 "plausible" the subscriber to the IP address participated in the infringement and finding "it is not
 12 clear to this Court how Plaintiff can discover [whether the defendant was actually using the IP
 13 address] without [engaging in discovery]").⁹

14 **V. CONCLUSION**

15 The FAC provides more than enough factual detail and explanation to afford Defendant
 16 fair notice of Plaintiff's straightforward copyright infringement claim against him and the
 17 grounds upon which it rests. Defendant's motion does not say "what am I being sued for?,"
 18 rather, it says "give me more facts about your claims." There is a name for such a request:
 19 "discovery." For all the reasons outlined above, Defendant's Motion is completely meritless and
 20 the Court should deny it.

21 //

22 //

23 //

24 //

25 _____
 26 ⁹ Since the filing of the Amended Complaint, Defendant's counsel has provided Plaintiff's counsel with Defendant's first and last name only. No address or any other identifying information was provided. Plaintiff is continuing its investigation in light of this information but without an address, it is of limited investigatory value.

1 DATED this 6th day of August, 2018.

2 FOX ROTHSCHILD LLP

3
4 s/ Bryan J. Case

5 Bryan J. Case, WSBA #41781
6 Lincoln Bandlow, *admitted Pro Hac Vice* (CSBA
7 #170449)
8 Attorneys for Plaintiff
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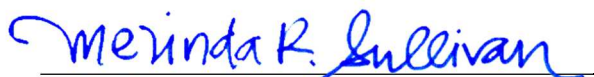
CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

J. Curtis Edmondson, WSBA #43795
399 NE John Olsen Avenue
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Telephone: (503) 336-3749
Email: jcedmondson@edmolaw.com

☒ Via CM/ECF
☐ Via U.S. Mail
☐ Via Messenger Delivery
☐ Via Overnight Courier
☐ Via Facsimile

DATED this 6th day of August, 2018.


Melinda R. Sullivan
Legal Administrative Assistant